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No. 86-421

Supreme Court, U.S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

BOARD OF DIRECTORS OF
ROTARY INTERNATIONAL, et al.,

Appellants,

v.

ROTARY CLUB OF DUARTE, et al.,

Appellees.

ON APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

Brief of Lloyd Lions Club
As Amicus Curiae In
Support of Appellees

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Lloyd Lions respectfully submits this brief as amicus curiae in support of appellees, Rotary Club of Duarte, et al. Written consent of the parties is submitted with this Brief.

INTEREST OF AMICUS

Lloyd Lions Club is a non-profit Oregon corporation. Prior to 1981, Lloyd Lions was a chartered member, in good standing, of the International Association of Lions Clubs. During June and July of 1981, Lloyd Lions invited two women to join as members. Both women accepted the invitation and were duly admitted. The International Association of Lions Clubs then revoked Lloyd Lions Charter, effective October 5, 1981, due to its admission of the two women as members. The International relied upon its Constitution which requires that members be males over the age of eighteen and of good moral character.

Lloyd Lions instituted legal proceedings alleging that the International's action in revoking its charter violated the Oregon Public Accommodations Act, ORS 30.680, et seq. That state law is similar to the Unruh Act, Cal. Civ. Code §51, at issue here, in that the Oregon statute prohibits discrimination by places of public accommodation on the same prohibited bases of sex, race, color, religion, ancestry and national origin. The Oregon Supreme Court has construed the term "public accommodation" to be a business or commercial enterprise.

The Court of Appeals upheld the trial court's rulings that the International (1) was a business or commercial enterprise and therefore subject to the state law, and (2) had violated the state law by revoking Lloyd Lions' charter solely because it had admitted women as members. The case is presently pending before the Oregon Supreme

Court.

The same constitutional issues which have been raised by appellant in the present case, have been raised by the International Association of Lions Clubs in the litigation in which it is involved with this amicus. Due to the similarities of issues, the present case has great potential significance to the Lions litigation.

ARGUMENT

In the present case, Rotary International is in the position of arguing that the federal constitution protects the right of individual members of local Rotary Clubs to associate with others of their own choosing; while itself denying this right to members of the Rotary Club of Duarte. Rotary International seeks to persuade this Court that the State of California is interfering with its freedom of association, yet the "association" is nothing more than sex discrimination. This Court has stated in another context, that "'the constitution . . . places no value on discrimination'

[citation omitted] and while 'invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment . . . it has never been accorded affirmative constitutional protections.'" Runyon v. McCrary, 427 U.S. 160, 174 (1976)(citing Norwood v. Harrison, 413 U.S. 455). Thus, in Runyon, this Court held that while a nonsectarian, commercial school's right to promote the belief that blacks should be excluded from the school has First Amendment protection, "it does not follow that the practice of excluding racial minorities from such institutions is also protected by the same principle." Id., at 176. Similarly, while Rotary International's belief that women should be excluded from membership may be protected under the First Amendment, its practice of compelling a local club, against its wishes, to exclude

women is of the same type of invidious private determination which this Court said "has never been accorded affirmative constitutional protections." 427 U.S. at 176.

The fact that Rotary International's belief and practice conflict with the belief and practice of Rotary of Duarte, raises another point. Rotary International is an association of local clubs. An individual belongs not to Rotary International, but rather to a local club. It is the Clubs, as entities which are members of Rotary International. However, the international association claims to be asserting the right of individual members to exclude women. The individual members whose associational rights are at stake in the present litigation, however, are the members of Rotary of Duarte, and they are seeking to protect their right to associate with women in pursuit of Rotary objectives.

And from the record, it appears that in 1980, 40% of the member clubs agreed with Rotary of Duarte, that local clubs should be permitted to admit women. (Brief of Appellant, p. 11). Thus, a sizeable minority of member clubs disagrees with the position of Rotary International. More significantly, however, the individuals directly involved in the present proceedings are individuals whose wish to associate with women is being denied by Rotary International. This is not a case where women members have been forced upon a club whose male members did not wish to associate with them. The men of Rotary of Duarte invited the two women members to join.

Thus, to the extent that Rotary International claims to assert the associational interests of individual members, it must be remembered that as long ago as

1980, there was no broad consensus among those members on the issue of the exclusion of women. Further, Rotary International's practice of compelling obedience to its requirement of excluding women directly interferes with the right of local clubs and their members to associate with women in their Rotary activities.

A separate, but somewhat related issue is the nature of the associational interest which Rotary International claims has been infringed. In Roberts v. United States Jaycees, 468 U.S. 609 (1984), this Court identified two different types of the constitutionally protected right of association: freedom of intimate association and freedom of expressive association. The type of intimate association which has traditionally been regarded as deserving of constitutional protection was outlined by the Court in Roberts. 468 U.S. at 618-620.

The personal affiliations included in this type are characterized by relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation and seclusion from others in critical aspects of the relationship. Id., at 620.

It would seem that freedom of intimate association is meaningless in the context of an asserted right of member clubs to associate with other member clubs and to exclude clubs with women members. First and foremost, this is due to the size of the association. Nearly 20,000 local clubs belong to Rotary International. (Brief of Appellant, p. 7). Further, there is no evidence that clubs interact to any great extent, other than through their common membership in the parent organization. If the relevant association is considered as that of all the individual members of all the local clubs, it is

likewise meaningless to speak of protecting intimate association among 907,750 members.

Thus, if Rotary International is to rest its claim to protection on the concept of intimate association, it must look to the individual members of an individual club, each grouping of each club, separate from the others. For only in this regard could it be plausibly argued that there are personal bonds among individuals of the type constitutionally protected. However, it is precisely here, that Rotary International's argument must fail. For the effect of its practice of compelling obedience to its rule of exclusion of women, is to seriously interfere with the associational rights of those individuals, who acting in concert, have asserted their right to associate with women in pursuit of their common, Rotarian goals. By cloaking its action in the guise of freedom

of association, Rotary International seeks to use constitutional safeguards - not as a shield - but as a sword, to enforce its right to discriminate against women, in some cases, irrespective of the wishes of the local club. To hold that Rotary International's exclusion of women is constitutionally protected intimate association, would be to afford the affirmative constitution protection to the very type of invidious discrimination condemned by this Court in Runyon.

The second type of protected association described by the Roberts court is freedom of expressive association, which the Court characterized as the right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. 468 U.S. at 622.

However,

"the right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."

Id., at 623.

The State of California has a compelling interest in the eradication of sex discrimination by business establishments within its borders. To that end, it adopted the Unruh Act, Cal. Civ. Code §51. The Act does not on its face, suppress speech or distinguish prohibited from permitted activity on the basis of viewpoint. Nor does application of the Act to Rotary International seriously interfere with the male members' expressive association. Men who do not believe women should

be admitted to Rotary, may freely express that opinion and are in no way required to invite women to join their clubs. Moreover, it is important to bear in mind that the purpose for which Rotarians have joined together is "to encourage and foster the ideal of service as a basis of worthy enterprise" (Brief of Appellant, p. 9), and this laudable purpose is not interfered with when a local club admits two service-minded women. Nor can it be seriously maintained that only by excluding women, can Rotary International maintain its effectiveness as a worldwide service organization. Despite Rotary International's attempt to imply that other, unspecified cultures would not accept the idea of women members, there is no concrete evidence that membership would decline or that recipients would refuse aid simply because some clubs had chosen to admit

women. Finally, it should be remembered that membership in a Rotary Club is by invitation. The California Court of Appeals decision does not require that all California Rotary Clubs admit any women who request membership. Rather it prohibits Rotary International from excluding a local club, which has itself decided to invite women as well as men into membership.

CONCLUSION

For the reasons stated above, the Court should affirm the decision of the Court of Appeals of the State

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of California.

Respectfully submitted,

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on the _____ day of January, 1987, by mailing to them three true and correct copies thereof, certified by me as such. I further certify that said copies were placed in sealed envelopes addressed to said attorneys as above stated, which are their regular office addresses, or their addresses as last given by them on a document which they have filed in the within entitled cause and served. Said sealed envelopes were then deposited in the United States Post Office at Portland, Oregon on the day last above mentioned, with the postage thereon fully paid.

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